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No. 2015

United States
Circuit Court of Appeals
For the Ninth Circuit.

SOLOMON RIPINSKY,

Appellant,

vs.

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN G. MORRISON, J. A. NETTLES, CORTEZ FORD, TOM VALEUR, R. M. ODELL, D. BUTRICH, E. J. BERGER, IDA JOHNSON, M. E. HANDY, FRED HANDY, G. C. DE HAVEN, TIM CREEDON, BENJAMIN A. MAHAN, THOMAS DRYDEN, ED. FAY, JAMES FAY, H. FAY, W. W. WARNE, THOMAS VOGEL, C. BJORNSTAD, H. RAPPOLT, KAREN BJORNSTAD, M. V. McINTOSH, MARY V. McINTOSH, JESSE CRAIG, E. A. ADAMS, J. W. MARTIN, A. J. DENNERLINE, S. J. WEITZMAN, PETER JOHNSON, Mrs. KATE KABLER, and V. READE,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Alaska, Division No. 1.

FILED

OCT 25 1911

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Circuit Court of Appeals
For the Ninth Circuit.

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Appellant,

vs.

G. W. HINCHMAN, WILLIAM HOLGATE, JOHN G.
MORRISON, J. A. NETTLES, CORTEZ FORD,
TOM VALEUR, R. M. ODELL, D. BUTRICH, E.
J. BERGER, IDA JOHNSON, M. E. HANDY,
EDWARD HANDY, C. C. DE HAVEN, TIM

*Records of U. S. Circuit
Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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In the District Court for the District of Alaska, Division No. 1 at Juneau.

No. 547-A.

G. W. HINCHMAN, WILLIAM HOLGATE,
JOHN G. MORRISON, J. A. NETTLES,
CORTEZ FORD, TOM VALEUR, R. M.
ODELL, D. BUTRICH, E. J. BERGER,
IDA JOHNSON, M. E. HANDY, FRED
HANDY, G. C. DeHAVEN, TIM CREE-
DON, BENJAMIN A. MAHAN, THOMAS
DRYDEN, ED. FAY, JAMES FAY, H.
FAY, W. W. WARNE, THOMAS VOGEL,
C. BJORNSTAD, H. RAPPOLT, KAREN
BJORNSTAD, M. V. McINTOSH, MARY V.
McINTOSH, JESSE CRAIG, E. A. ADAMS,
J. W. MARTIN, A. J. DENNERLINE, S.
J. WEITZMAN, PETER JOHNSON, Mrs.
KATE KABLER and V. READE,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Third Amended Complaint.

Come now the plaintiffs above named and file this their Third Amended Complaint herein, and complain of the defendant and allege:

I.

That the plaintiffs above named, and each of them, are citizens of the United States and residents and occupants of property in the town of Haines, in the

District of Alaska, and residents of and in the occupancy of lands embraced in Survey No. 573, at Haines, Alaska, and that all of the land embraced in the said United States Survey No. 573, situated in the town of Haines, Alaska, is more particularly described as follows, to wit:

Beginning at Cor. No. 1, under Ripinsky's house, from which point U. S. L. M. No. — bears S. 6° $45'$ W., 2.64 [1*] chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 1; thence from true Cor. N. 14° $20'$ E., along mean high water mark of Portage Cove, 2.30 chains to Cor. No. 2, not set, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 2; thence from true Cor. W. 9.10 chs. to Cor. No. 3, an iron pipe 3 inches in diam. marked S. 573 C. 3; thence N. 3.16 chs. to Cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 1.68 chs. to Cor. No. 6, a stone marked S. 573, C. 6; thence S. 80° $54'$ E. along north line of Presbyterian Mission, 34.00 chs. to Cor. No. 7, an iron pipe marked S. 573, C. 7; thence N. 1.67 chs. to Cor. No. 8, an iron pipe marked S. 573, C. 8; thence E. 6.23 chs. to Cor. No. 1, the place of beginning. Magnetic variation at all corners 28° $30'$ east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

II.

That all of said lands embraced in said Survey No. 573 have been ever since December, 1897, and now are, settled upon and occupied as a townsite and are

*Page number appearing at foot of page of original certified Record.

not subject to entry under agricultural pre-emption laws or otherwise than under the laws of the United States applicable to public lands settled upon and occupied as a townsite, and that the plaintiffs now are and have been ever since December, 1897, in possession and occupation in good faith of all the lands embraced in said Survey No. 573, hereinbefore described; that all of said lands embraced in said Survey No. 573 constitute the principal business section of the town of Haines, Alaska, and that the plaintiffs are occupying in good faith, and have at all times been occupying in good faith, said lands since the said month of December, 1897, for [2] business and residential purposes; and that these plaintiffs have constructed buildings, such as stores, hotels, residences, etc., in value exceeding the sum of \$50,000.00; annexed hereto and marked Exhibit "B" is a map of the portion of the townsite of Haines, Alaska, included within the exterior boundaries of the said United States Survey No. 573, and the plaintiffs herein claim that certain street 50 feet wide, and shown on said map and known as Main Street, and those certain streets shown on said map 75 feet wide and known as Second Avenue, Third Avenue, Fourth Avenue, Fifth Avenue and Sixth Avenue, respectively, and, also, that portion of Dalton Street as shown within the exterior boundaries of said Ripinsky Homestead Survey, as public streets and rights of way, and also claim that certain alleyway running between Dalton and Main Streets, and shown on said map and being 20 feet wide, as a public right of way or alley, which said streets and alleys are claimed

in common by all of the plaintiffs and by all of the residents of Haines, Alaska; that the remainder of the ground not so included within the streets and alleys, these plaintiffs claim to hold, together with the ground included within the streets and alleys, as occupants of townsite land prior to entry and as members of the community so occupying the said lands, together with the streets and alleys, in common, for the benefit of the said community and for the benefit of each and all of the said plaintiffs and occupants; and that the ground so set forth on said map and marked thereon by metes and bounds and by numbered parcels is in the occupancy of the plaintiffs herein respectively, as on the said map shown and indicated as follows, to wit:

Block 1: Parcel 1, J. G. Morrison; parcel 2, Nettles & Ford; parcel 3, S. J. Weitzman; parcel 4, H. Fay; parcel 5, Sol Ripinsky; [3] parcel 6, J. W. Martin; parcel 7, B. A. Mahan; parcel 8, M. V. McIntosh; parcel 9, J. W. Martin; parcel 10, James Fay; parcel 11, D. Butrich; parcel 12, R. L. Weitzman; parcel 13, R. L. Weitzman; parcel 14, E. A. Adams; parcel 15, Fred Handy; parcel 16, J. G. Morrison; parcel 17, G. C. Dehaven and Tim Creedon.

Block 2: Parcel 1, Thomas Vogel; parcel 2, T. D. Valeur; parcel 3, Jim Fay; parcel 4, Ida Johnson; parcel 5, S. J. Weitzman; parcel 6, M. E. Handy; parcel 7, W. W. Warne; parcel 8, W. W. Warne; parcel 9, W. W. Warne; parcel 10, W. W. Warne; parcel 11, W. W. Warne; parcel 12, Karen Bjornstad; parcel 13, Karen Bjornstad; parcel 14, Karen Bjornstad.

Block 3: Parcel 1, Mary V. McIntosh; parcel 2, Wm. Bryson; parcel 3, H. Fay; parcel 4, E. J. Berger; parcel 5, Karen Bjornstad; parcel 6, Henry Rappolt; parcel 7, Geo. Hinchman; parcel 8, Geo. Hinchman; parcel 9, C. Bjornstad; parcel 10, H. Conger; parcel 11, Wm. Holgate; parcel 12, Wm. Holgate.

Block 4: Parcel 1, Kate Kabler; parcel 3, H. Fay; parcel 4, Pete Johnson; parcel 5, Pete Johnson; parcel 6, Pete Johnson.

Block 5: Parcel 1, A. J. Dennerline; parcel 2, M. E. Handy; parcel 3, Ed. Fay; parcel 4, John Padlock; parcel 5, Thomas Dryden; parcel 6, Mrs. Jesse Craig.

Block 6: Parcel 1, Jo. Stubbler; parcel 2, A. J. Dennerline.

III.

That these plaintiffs have applied to the proper officers in the United States Land Office for a survey of said lands embraced within said Survey No. 573 for the purpose of entering the same as a townsite under the laws of the United States, in [4] such cases made and provided, including all of the lands embraced within the exterior boundaries of the town of Haines, Alaska, and that it is the intention of the plaintiffs and the occupants of the said town of Haines to apply for a United States patent to the lands embraced in said townsite and in said Survey No. 573.

IV.

That the defendant, Solomon Ripinsky, claims an interest and estate in and to the said lands embraced

within the said Survey No. 573 adverse to these plaintiffs.

V.

That the said defendant, Solomon Ripinsky, has never occupied any of the said lands within the said Survey No. 573 except two small parcels, one 25x50 feet, which he acquired by purchase from one H. Fay, and another 100x150 feet, which he occupies as a residence.

VI.

That on the 17th day of July, 1903, the said Solomon Ripinsky filed, or caused to be filed, a pretended location notice in the United States Commissioner's office at Skagway, in the District of Alaska, attempting to, and claiming to, locate all of the lands embraced within the exterior boundaries of the U. S. Survey No. 573 as a homestead; that at the time of filing said pretended location notice, all of the said lands embraced within the said location notice and within the said Survey No. 573 were occupied by the residents and citizens of the town of Haines, Alaska, and these plaintiffs have certain townsite holdings within the town of Haines, and that none of said lands were held by the said Solomon Ripinsky as a homestead, and in truth [5] and in fact, none of said lands were occupied by said Solomon Ripinsky save and except the two parcels herein described; that the location by the said Solomon Ripinsky of said lands was not in good faith, and that said Solomon Ripinsky well knew that the said lands were not subject to location for homestead purposes.

VII.

That on or about the 2d day of March, 1906, the said Solomon Ripinsky filed in the United States Land Office at Juneau, Alaska, his application for a patent to the lands embraced within said U. S. Survey No. 573; that thereafter a notice was issued and published by the Register and Receiver of the United States Land Office at Juneau, Alaska, of the application of the said defendant for the lands embraced in the said Survey No. 573; that within thirty days after the period of publication of said notice, the plaintiffs herein duly filed in the United States Land Office at *Junea*, Alaska, their notice of adverse claim, a copy of which is annexed hereto and marked Exhibit "A."

That it is the intention of these plaintiffs, inhabitants and occupants of the said townsite of Haines, as members of said community, to perfect their title to the said townsite lands by proceedings in the United States Land Office, under joint application of the members of said community for a United States survey of said townsite and the townsite entry, to be made by a trustee, under the laws of the United States applicable to Alaska in such cases, which said trustee shall apply for and make said entry for the use and benefit of these plaintiffs and all the members of said townsite and who shall obtain the said title for the common interest of all of the occupants of said townsite.

WHEREFORE, the plaintiffs pray that decree be entered herein adjudging and decreeing: [6]

1. That the said property included within the ex-

terior boundaries of Survey No. 573 is not subject to application for patent on the part of the defendant herein and is not, and was not, subject to location as a homestead.

2. That the plaintiffs herein be adjudged and decreed to be entitled to the lands embraced in the said U. S. Survey No. 573 as against the defendant, save and except the two parcels of land herein mentioned, which are in the actual occupation of the said defendant.

3. That the defendant be perpetually enjoined from proceeding with his said application for patent under the homestead laws and that the title of the plaintiffs herein and their right to the possession and occupation of the lands described in the said Survey No. 573, save and except the two parcels of land hereinbefore mentioned, be determined to be paramount to the claim of the defendant herein; and that any claim, interest or estate which the defendant may set forth to the said property be forever quieted in favor of these plaintiffs.

4. For plaintiffs' costs and disbursements herein laid out and expended, and for such other and further relief as to the Court may seem meet and proper.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiffs. [7]

Exhibit "A."

In the United States Land Office at Juneau, Alaska.

In the Matter of the Application for Patent for
Homestead Claim by SOLOMON RIPIN-
SKY.

G. W. HINCHMAN, WILLIAM HOLGATE,
JOHN G. MORRISON, JAMES A. NET-
TLES, CORTEZ FORD, TOM VALEUR,
R. M. ODELL, D. BUTRICH, E. J. BER-
GER, IDA JOHNSON, M. E. HANDY,
FRED HANDY, G. C. DEHAVEN, TIM
CREEDON, BENJAMIN A. MAHAN,
THOMAS DRYDEN, ED. FAY, JAMES
FAY, H. FAY, W. W. WARNE, TIM VO-
GEL, C. BJORNSTAD, H. RAPPOLT,
CAREN BJORNSTAD, M. V. McINTOSH,
JESSIE CRAIG, E. A. ADAMS, MARY V.
McINTOSH, J. W. MARTIN, A. J. DEN-
NERLINE, S. J. WEITZMAN, PETER
JOHNSON, MRS. KATE KABLER and V.
READ,

Adverse Claimants.

Adverse Claim.

To the Honorable Register and Receiver of the
United States Land Office at Juneau, Alaska:

Your adverse claimants, G. W. Hinchman, Will-
iam Holgate, John G. Morrison, James A. Nettles,
Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich,
E. J. Berger, Ida Johnson, M. E. Handy, Fred
Handy, G. C. Dehaven, Tim Creedon, Benjamin A.

Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Tim Vogel, C. Bjornstad, H. Rappolt, Caren Bjornstad, M. V. McIntosh, Jessie Craig, Mary V. McIntosh, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Kabler and V. Read, to the application for patent for homestead claim for land embraced in Survey No. 573, at Haines, Alaska, respectfully show:

1. That all of your adverse claimants are citizens of the United States and residents of the town of Haines, Alaska. [8]

2. That all of the land embraced in said United States Survey No. 573 for which Solomon Ripinsky has applied to your office for patent as a homestead, and which land is more particularly described as follows, to wit:

Beginning at a cor. No. 1, under Ripinsky's house, from which point U. S. L. M. No. — bears S. $6^{\circ} 45'$ W. 2.64 chains distant, witness cor., bears W. 30 links, a stone marked S. S. 573 W. C. 1; thence from true cor. N. $14^{\circ} 20'$ E. along mean high water mark of Portage Cove, 2.30 chns. to cor. No. 2, not set, witness cor. bears W. 30 lks. a stone marked S. 573 W. C. 2; thence from true cor. west 9.10 chs. to cor. No. 3, an iron pipe 3 inches in diam. marked $S\frac{3}{4}$ 573 C. 3; thence N. 3.16 chs. to cor. No. 4, a granite stone marked S. 573 C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 1.68 chs. to cor. No. 6, a stone marked S. 573 C. 6; thence S. $80^{\circ} 54'$ E. along north line of Presbyterian Mission, 34.00 chs. to cor. No. 7, an iron pipe

marked S. 573 C. 7; thence N. 1.67 chs. to cor. No. 8, an iron pipe marked S. 573 C. 8; thence E. 6.23 chs. to cor. No. 1, the place of beginning. Magnetic variation at all corners $28^{\circ} 30'$ east; containing 15.4 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

3. That all your adverse claimants are bona fide residents of said town of Haines, Alaska, and are now, and have been at all times since December, 1897, in possession and occupation, in good faith, of all the land embraced within said Survey No. 573 and hereinbefore described; that all of said land embraced in said survey, and hereinbefore described, constitutes the principal business section of the town of Haines, Alaska, and that your adverse claimants are occupying in good faith and have been at all times occupying said land in good faith since December, 1897, for business and residential purposes; that your adverse claimants have constructed buildings, such as hotel structures for business purposes, residences, etc., in value exceeding the sum of \$50,000.00.

4. That it is the intention of your adverse claimants to join all of the citizens of the town of Haines, Alaska, in an application to the United States Land Office for a United States patent for all of the land embraced within the exterior boundaries [9] of the town of Haines, including all of the premises embraced within said Survey 573 as a townsite under and by virtue of the laws of the United States applicable to the District of Alaska.

5. That the applicaton of said Solomon Ripinsky for a United States patent for said land embraced

within said survey 573 is not made in good faith, for the reason that said Solomon Ripinsky has never actually occupied any of said premises, except two small parcels, one 25x150 feet, in the southeasterly corner of said land and marked on applicant's plat Ripinsky house, which he acquired by purchase from one H. Fay, and the other 100x150 feet, in the extreme eastern end of said land embraced in said survey and marked in applicant's plat Garden, which he occupies as a residence; that said Solomon Ripinsky filed a pretended location notice in the United States Commissioner's office at Skagway, in the District of Alaska, on July 17, 1903, claiming all of the lands embraced in said survey 573 as a homestead and at the time of filing said pretended location said Solomon Ripinsky well knew that all of said premises, excepting the small parcels heretofore described as occupied by himself, were actually occupied in good faith and in the possession of all of your adverse claimants and that at the time of making said pretended location of said homestead claim said Solomon Ripinsky well knew that your adverse claimants had expended over forty thousand dollars in the construction of buildings and other improvements on said premises; that said Solomon Ripinsky is not in good faith in seeking United States patent for said premises for a homestead, but is endeavoring to procure patent to the same for speculative purposes. [10]

6. That prior to the filing of said pretended location notice by said Ripinsky, claiming said land as a homestead, your adverse claimants had expended a

sum of money exceeding \$40,000.00 in the improvement of said premises by building residences, store buildings and other structures on said premises and were at the time actually using and occupying said buildings as homes and store buildings; all of which was well known to the said Ripinsky at the time he filed for record in the United States Commissioner's office at Skagway, Alaska, his homestead notice claiming the land embraced in said homestead application, and that your adverse claimants have continued at all times since the initiation of their occupation in December, 1897, to occupy, improve and reside upon the premises described in said homestead application and said Survey 573; that the said Ripinsky was in the town of Haines, Alaska, during all of the time when said improvements were being made and said buildings erected by your adverse claimants and never notified or informed any of your adverse claimants in any manner that he laid any claim whatever to the premises on which they were making such improvements and never notified any of your adverse claimants that he intended to lay any claim whatever to any of the premises described in said homestead application and embraced within said survey 573, except the two small parcels thereof which have been hereinbefore referred to.

WHEREFORE, your adverse claimants pray that no further action be taken in your office upon said application of said Solomon Ripinsky for a United States patent as a homestead for the lands embraced within said survey 573 and described in said applica-

tion until the rights to said premises of your adverse claimants be determined in a court of competent jurisdiction [11] within the District of Alaska.

KATE A. KABLER.

S. J. WEITZMAN.

CORTEZ FORD.

JAMES A. NETTLES.

JOHN G. MORRISON.

IDA JOHNSON, by W. B. STOUT.

E. J. BERGER, by W. B. STOUT.

M. E. HANDY, by W. B. STOUT.

FRED HANDY, by W. B. STOUT.

B. A. MAHAN.

H. FAY.

ED. FAY.

J. W. MARTIN.

T. DRYDEN.

M. V. McINTOSH.

MARY V. McINTOSH.

JESSIE CRAIG.

JAS. FAY.

R. M. ODELL.

G. W. HINCHMAN.

G. C. DeHAVEN.

TIM CREEDON.

TOM VALEUR.

TIM VOGEL.

C. BJORNSTAD.

CAREN BJORNSTAD.

A. J. DENNERLINE.

E. A. ADAMS.

H. RAPPOLT.

W. W. WARNE, by C. FORD.

D. BUTTERICK.

WM. HOLGATE.

PETER JOHNSON, by S. J. WEITZMAN.

V. READ.

United States of America,
District of Alaska,—ss.

I, S. J. Weitzman, being first duly sworn, on oath depose and say: I am a citizen of the United States and a resident of Haines, Alaska; I am one of the adverse claimants in the above-entitled matter; I have read the above adverse claim, know the contents thereof and the same is true.

S. J. WEITZMAN.

Subscribed and sworn to before me this 1st day of May, 1906.

[Seal]

T. R. LYONS,

Notary Public for Alaska. [12]

H. Fay being first duly sworn on oath deposes and says: That he is one of the plaintiffs in the above-entitled action; that he has read the foregoing Amended Complaint, knows the contents thereof and that the same is true as he verily believes.

H. FAY.

Subscribed and sworn to before me this 17th day of May, 1911.

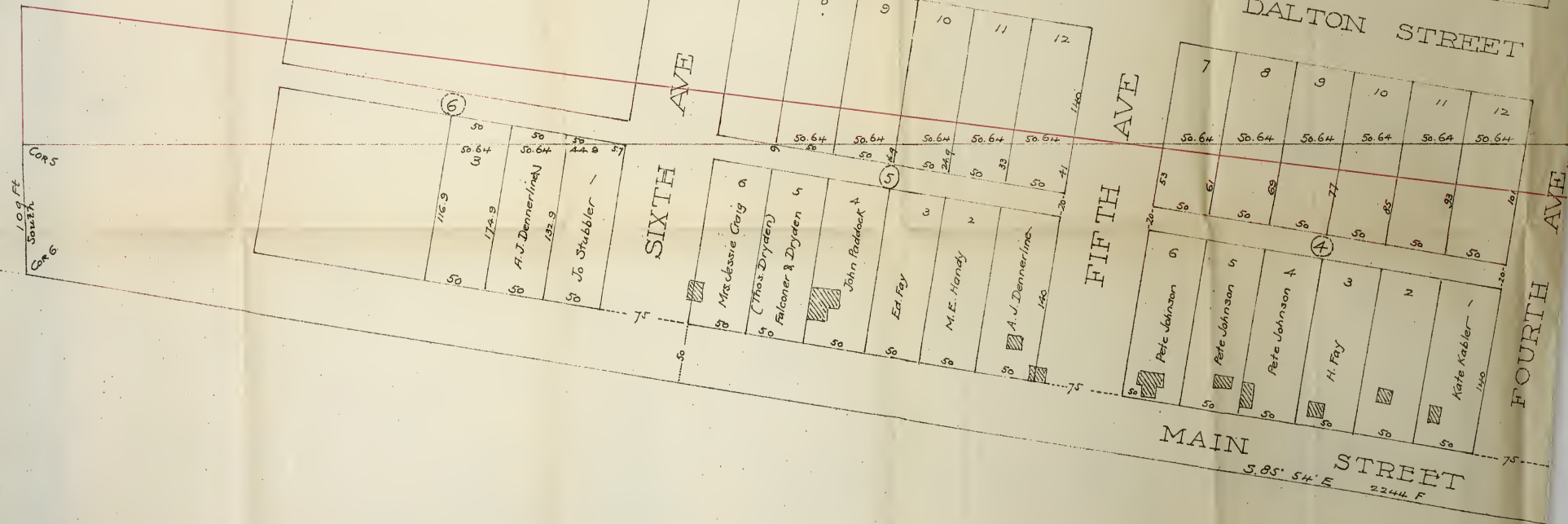
LEWIS P. SHACKLEFORD,

Notary Public in and for Alaska.

Service admitted May 13th, 1911.

J. H. COBB,

Atty. for Deft.



M I S S I O N





[Endorsed]: No. 547-A. In the _____ Court of the United States for the _____ of _____ G. W. Hinchman et al. vs. Solomon Ripinsky. Third Amended Complaint. Filed May 13, 1911. E. W. Pettit, Clerk. By _____, Deputy. Shackelford & Bayless, Attys. for Plffs. [13]

In the District Court for Alaska, Division No. 1, at Juneau.

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Demurrer.

Now comes the defendant by his attorneys and demurs to the third amended complaint of the plaintiffs herein and for grounds of demurrers allege:

1st. The cause of action now attempted to be plead by the plaintiffs is barred by the statute of limitation in such cases made and provided for the following reasons to wit: The original complaint herein filed on July 2d, 1906, and which purported to be an adverse suit under the statute was abandoned as to the cause of action arising in the adverse proceedings by the plaintiffs by the filing of the second amended complaint herein which is simply the ordinary suit to quiet title, and it is now too late to revive the same by an amended as an adverse suit under the statute.

2d. There is a misjoinder of parties, plaintiffs and of cause of action in this, that the plaintiffs are claiming severally *a* and separately designated portions of survey No. 573 the ground in controversy and cannot unite in one action suit to quiet title to the several portions so separately claimed by the plaintiffs, nor can the plaintiffs unite in the same action and suit to quiet title to land in their possession individually with a suit to protect claimed rights in public thoroughfares.

3d. The said third amended complaint does not state facts sufficient to constitute a cause or causes of action in that it appears therefrom that the plaintiffs have no title to any [14] of the ground in controversy, but merely alleges an intention to acquire title in the future, all of which the defendant prays judgment of the court.

R. W. JENNINGS and
J. H. COBB,

Attorneys for Defendant.

[Endorsed]: Original No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Solomon Ripinsky, Defendant. Demurrer to 3d Amended Complaint. Filed May 15, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. R. W. Jennings, J. H. Cobb, Attorneys for Defendant. Office: Juneau, Alaska.
[15]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOL RIPINSKY,

Defendant.

Order Overruling Demurrer of Defendant.

This cause coming on regularly for hearing upon the demurrer of defendant to the third amended complaint herein, the plaintiffs being represented by L. P. Shackelford, Esquire, and the defendant being represented by J. H. Cobb, Esquire, and after argument by respective counsel and the Court being fully advised in the premises, it is ordered that said demurrer be and the same is overruled, to which defendant excepts and exception is allowed.

And it is further ordered that defendant file his answer this afternoon.

EDWARD E. CUSHMAN,

Judge.

Juneau, Alaska, May 15, 1911. [16]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 547-A.

GEORGE HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKI,

Defendant.

Answer to Third Amended Complaint.

Now comes the defendant by his attorneys, and for answer to the Third Amended Complaint denies and alleges as follows:

I.

Referring to the first paragraph of said answer, defendant has no knowledge or information sufficient to enable him to form a belief as to whether the plaintiffs are all citizens of the United States and he therefore denies the same.

He further denies that said survey No. 573 is within the town of Haines or any town, but he admits it is within what is claimed to be the town of Haines.

II.

Referring to the second paragraph of said amended complaint, defendant denies all and singular the allegations therein contained except as in the affirmative answer set forth.

III.

Referring to the third paragraph of said amended complaint, defendant has no knowledge or information sufficient to enable him to form a belief concern-

ing the matters therein alleged, and he therefore denies all and singular the allegations therein contained.

IV.

Referring to the fifth paragraph of said amended complaint, defendant denies all and singular the allegations therein contained.

V.

Referring to the sixth paragraph of said second amended complaint defendant denies all and singular the allegations therein contained [17] except as in the affirmative answer expressly set forth.

VI.

Referring to the seventh paragraph of said amended complaint defendant admits the allegations therein contained in the first subdivision thereof relating to the proceedings in the land office; but he denies all and singular the other and remaining allegations in said paragraph contained.

And for a further and affirmative defence and by way of cross-complaint, defendant alleges:

I.

That defendant is a citizen of the United States.

II.

That the lands embraced within the exterior boundaries of United States Survey No. 573, mentioned and described in the said complaint, were on and long prior to the 17th day of May, 1884, in the actual occupancy of and claimed by natives of Alaska to wit: Sarah Dickinson and her family, and said lands were by the act of Congress of said date reserved to the use of such occupants and claimants,

and their grantees and successors until Congress should provide the means whereby such claimants or their successors should obtain the title.

III.

That said Sarah Dickinson continued in the use, occupancy and claim to said premises, until on or about the 2d day of December, 1897, when she and her family for a valuable consideration sold and conveyed the same to this defendant and placed him in the quiet and undisturbed and actual possession thereof, and he has ever since resided thereon and claimed the whole thereof as his home.

IV.

That on or about December 14th, 1897, the plaintiff H. Fay accompanied by a number of men acting with him came to said premises, and by superior force and against the will and protest of the defendant dispossessed and ejected him from all that portion of said [18] premises except a small piece of ground at the extreme easterly end thereof, where his house actually stood, and that portion described as lot or parcel 5 in Block 1, and thereafter illegally and wrongfully pretended to lay the same out into a townsite, and pretended to have the same surveyed into lots, blocks, streets and alleys. That said acts were illegal and void, for the reason that said land was not open to settlement or entry under the townsite laws. That thereafter a number of the other plaintiffs pretended to set up claims of various sorts to separate portions of said premises same by pretended locations for trade and manufacturing purposes, some as town lots, some as naked occupants,

the precise nature and extent of the several claims of the plaintiffs is to the defendant unknown, buth they are each and all subsequent in time inferior to, and void against the title and claim of the defendant.

V.

Defendant further alleges that on or about June 23d, 1903, he posted and filed for record his notice of location of a homestead, embracing the lands in controversy; that thereafter said notice was amended on or about Dec. 18, 1905; and defendant procured said claim to be surveyed by C. E. Davidson, U. S. Deputy Surveyor on March 23d—26th, 1905 and thereafter on July 31st, 1905, said survey was duly approved by the Surveyor General for Alaska as U. S. survey No. 573, homestead claim of defendant; and thereafter he duly filed in the United States Land Office at Juneau, Alaska, his application to enter said land, gave the notice required by law and made proof of occupancy and improvements required by law, and of his right to enter the same as a homestead and thereby became and now is entitled to a patnet from the Government for the lands embraced in said survey; and said patent would have been issued but for the wrongful acts of the plaintiffs in filing said pretended adverse claim and instituting this suit whereby the proceedings in the Land Department were wrongfully suspended. [19]

WHEREFORE defendant prays that the plaintiffs take nothing by this suit, that their bill be dismisses, that defendant be adjudged to be the owner and entitled to a patent for the said land, for costs of suit

and general relief.

R. W. JENNINGS and
J. H. COBB,
Attorneys for Defendant.

United States of America,
District of Alaska,—ss.

Solomon Ripinski being first duly sworn on oath deposes and says: I am the defendant above named, I have read the above and foregoing answer, know the contents thereof, and the same is true as I verily believe.

SOLOMON RIPINSKI.

Subscribed and sworn to before me this the 15th day of May, 1911.

[Seal]

J. H. COBB,

Notary Public in and for Alaska.

Service of the within Answer is admitted to have been made by delivery of a copy thereof, this 15 day of May, 1909.

W. S. BAYLESS,
Of Attorneys for Plaintiff.

[Endorsed]: Original No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Solomon Ripinski, Defendant. Answer to 3d Amended Complaint. Filed May 15, 1911. E. W. Pettit, Clerk. By ———, Deputy. R. W. Jennings, and J. H. Cobb, Attorneys for Deft. Office: Juneau, Alaska.
[20]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 547-A.

GEORGE W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Findings of Fact.

On this day, this cause coming on to be heard on the testimony heretofore taken by the Referee in this cause, the opinion and decision of the Court heretofore rendered herein on the 10th day of July, 1908, the decision of the Court of Appeals on appeal therefrom and the amendment of said latter decision by said Court of Appeals, upon the petition for rehearing filed March 9, 1911 in said court, upon the decree and mandate of that court, the pleadings of the parties as thereafter amended and the further evidence taken in the above-entitled court, and the court being now fully advised in the premises makes and enters herein its Findings of Fact as follows, to wit:

1.

That all of the parties herein named except D. Butrich, E. J. Berger, Thomas Dryden, Peter Johnson, V. Reade and H. Rappolt are citizens of the United States and all the plaintiffs were at the time of the commencement of this action and have been for a long time prior thereto residents of the town of Haines and were at said time and for a long time

prior thereto in possession [21] and occupation of substantially all of that portion of Survey No. 573 at Haines, Alaska, included in Blocks 1, 2, 3, 4, 5 and 6 of the town of Haines as surveyed and platted by Walter Fogelstrom and were at all such times in possession of and using as streets and alleys the streets and alleys platted therein by him, except Lot 5 of Block 1 of said plat, which said survey No. 573 is more particularly described as follows:

Beginning at Cor. No. 1, under Ripinsky's house, from which point U. S. L. M. No. — bears S. 6° 45' W. 2.64 chains distant, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 1; thence from true Cor. N. 14° 20' E., along mean high-water mark of Portage Cove, 2.30 chains to cor. No. 2, not set, witness Cor. bears W. 30 links, a stone marked S. 573 W. C. 2; thence from true Cor. W. 9.10 chains to Cor. No. 3, an iron pipe 3 inches in dia. marked S. 573 C. 3; thence N. 3.16 chains to Cor. No. 4, a granite stone marked S. 573, C. 4; thence W. 31.27 chs. to Cor. No. 5, a stone marked S. 573 C. 5; thence S. 168 chs. to Cor. No. 6, a stone marked S. 573 C. 6; thence S. 80° 54' along north line of Presbyterian Mission 34.00 chs. to Cor. No. 7 an iron pipe marked S. 573 C. 7; thence N. 1.67 chs. to cor. No. 8, an iron pipe marked S. 573, C. 8; thence E. 6.23 chs. to Cor. No. 1 the place of beginning. Magnetic variation at all corners 28° 30' east; containing 15.40 acres, is within the exterior boundaries of the town of Haines, in the District of Alaska.

That neither the plaintiffs, nor anyone in their behalf has ever made an entry of said lands or any part

thereof for townsite purposes.

2.

That the defendant acquired no right, title or interest in or to any of the premises within said Survey No. 573 described in paragraph 1 of these Findings by virtue of the alleged deed, dated December 2, 1897, and signed S. Dickinson; and that the defendant acquired no right, title, interest, possession or right of possession in or to any of the lands included in said survey described in paragraph 1 of these Findings by virtue of the homestead location notice which he filed at the recording office at Skagway, Alaska, on the 23d day of June, 1903, and the defendant acquired no right, title, interest, possession or right [22] of possession in or to said premises by virtue of the amended location which he filed in the recording office at Skagway, Alaska, on the 18th day of December, 1905, and that the said defendant never has had any right, title or interest in or to any of said premises or survey except two small parcels hereinafter described, one of *which obtained* by purchase and the other by actual occupation.

3.

That substantially all of the lands embraced within that portion of Survey No. 573 platted by said surveyor, Walter Fogelstorm, as the town of Haines and described in paragraph 1 of these Findings, except said lot 5 Block 1, were at the commencement of this action and have been ever since and prior to June 23, 1903, in the actual, notorious and exclusive possession and occupation in good faith of the plaintiffs herein, their grantors and predecessors in in-

terest, which said lands constitute the principal business section of the town of Haines, Alaska; and that the plaintiffs were at the time of the commencement of this action and have been at all times since the 23d day of June, 1903, occupying said lands in good faith for business and residential purposes; that these plaintiffs and their grantors and predecessors in interest have constructed buildings, such as stores, hotels and residences, on said platted portion of said land, in value exceeding the sum of \$50,000; that the larger portion of said land embraced in said platted portion of said Survey No. 573 has been since June 23, 1903 and prior thereto occupied by the plaintiffs, their grantors and predecessors in interest, in severalty and that the remaining portions, except said Lot 5, Block 1, were occupied and used by the plaintiffs, their grantors and predecessors in interest, at the time of [23] the commencement of this action and at all times since the 23d day of June, 1903, and prior thereto, as streets, alleys and thoroughfares.

4.

That the defendant has no right, title or interest in or to any of said lands included within Survey 573 at the time of the commencement of this action and never had any right, title, interest or possession in or to said lands, except two small tracts, one 20 feet wide by 50 feet long, known and described as Lot 5, Block 1 in said town of Haines and another small tract of land 100 feet wide by 150 feet long, which last parcel of land said defendant occupies as a residence, and which is in the extreme easterly end of said Survey 573 and is used by said defendant as a

residence, store and garden, and said *land* mentioned tract of land of said defendant is east of said Block 1 in the town of Haines, Alaska; that said two tracts of land described are included within the lines embraced in said Survey 573 and were owned and occupied by the defendant at the time of the commencement of this action, but said two tracts of land are the only portions of said land embraced in Survey No. 573 which were owned and occupied by the defendant at the time of the commencement of this action, or were ever owned, possessed or occupied by said defendant.

5.

That on or about the 2d day of March, 1906, the defendant Solomon Ripinsky, filed in the United States Land Office at Juneau, Alaska, his application for a patent to the lands embraced within said U. S. Survey 573; that thereafter a notice was issued and published with the Register and Receiver of the United States Land Office at Juneau, Alaska, of the application of the said defendant for the lands embraced in the said Survey No. 573; [24] that within thirty days after the period of publication of said notice the plaintiffs above named duly filed in the U. S. Land Office at Juneau, Alaska, their notice of adverse claim, and that this suit was duly begun under and in support of said adverse claim.

To all of which the defendant excepts and the exception is allowed. Done in open Court this 29th day of May, 1911.

EDWARD E. CUSHMAN,

Judge. [25]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 547-A.

GEORGE W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Conclusions of Law.

The Court having heretofore made and entered its Findings of Fact herein, now makes and enters its Conclusions of Law based upon such findings of fact:

1.

That the mere occupation of the lands described in the Findings of Fact by the plaintiffs, their grantors and predecessors in interest, without entry of said lands or any portion thereof for townsite purposes, does not constitute sufficient title or right upon which to entitle them to maintain this suit to quiet title or remove any cloud thereon, by reason of the defendant's assertion and claim thereto or otherwise.

2.

That the defendant is the owner and entitled to have his title thereto quieted against the plaintiffs to those two small tracts of land described in paragraph 4 of the foregoing findings.

3.

That the defendant is entitled to judgment for costs.

Decree will be entered in accordance with the fore-

going Findings of Fact and Conclusions of Law.

Done in open Court this 29th day of May, 1911.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: No. 547-A. In the District Court of the United States for the District of Alaska, Div. No. 1. G. W. Hinchman et al. vs. Sol Ripinsky. Findings of Fact and Conclusions of Law. Filed May 29, 1911. E. W. Pettit, Clerk. By _____, Deputy. [26]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 547-A.

GEORGE W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Decree.

This cause having come on regularly to be heard before the Court and the Court having heretofore made and filed the finding of fact and conclusions of law herein.

IT IS CONSIDERED by the Court, and so ordered, adjudged and decreed that the plaintiffs take nothing by their bill of complaint herein and the same is hereby dismissed on the merits.

IT IS FURTHER CONSIDERED by the Court and so ordered, adjudged and decreed that the defendant, Solomon Ripinsky, is the owner of the following described parcels of land in Survey No. 573,

bounded as follows:

A tract or parcel on the extreme east end of said Survey No. 573, 100x150 feet in area, and parcel No. 5 in Block No. 1, according to the plat made by Walter Fogelstrom, as shown on Exhibit No. 1 attached to the Third Amended Complaint herein, which parcels are disclaimed by plaintiffs, and that he has no interest or right in the remainder of said lands, included in said Survey No. 573.

IT IS FURTHER ORDERED, adjudged and decreed that the defendant, Solomon Ripinsky, do have and recover of and from the above-named plaintiffs, G. W. Hinchman, William Holgate, John G. Morrison, J. A. Nettles, Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich, E. J. Berger, Ida Johnson, M. E. Handy, Fred Handy, G. C. [27] De Haven, Tim Creedon, Benjamin A. Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Thomas Vogel, C. Bjornstad, H. Rappolt, Karen Bjornstad, M. V. McIntosh, Mary V. McIntosh, Jesse Craig, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Klaber and V. Reade, and each of them, jointly and severally, the costs and disbursements in this case laid out and incurred, taxed at the sum of \$ ——. For which let execution issue.

Dated this 29th day of May, 1911.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: In the District Court of the United States for the Div. No. 1 of Alaska. Hinchman et al.

vs. Sol. Ripinsky. Filed May 29, 1911. E. W. Pettit, Clerk. By H. Malone, Deputy. [28]

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Petition for Allowance of Appeal.

Solomon Ripinsky, defendant in the above-entitled and numbered cause, feeling himself aggrieved by the judgment and decree rendered against him in said cause, on the 29th day of May, 1911, prays the Court to allow him an appeal from the said decree to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit and to fix in the order allowing said appeal the security he should be required to give for costs.

J. H. COBB,

Attorney for S. Ripinsky.

[Endorsed]: No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plffs., vs. Solomon Ripinski, Deft. Petition for Allowance of Appeal. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By ———, Deputy. J. H. Cobb, Atty. for Deft. [29]

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Order Allowing Appeal.

This cause came on to be heard upon the petition of S. Ripinsky for the allowance of an appeal from the decree rendered herein on the 29th day of May, 1911, and the Court having heard said petition, and the assignments of error having been filed herewith, it is ordered that said appeal be, and the same is hereby allowed, and the said S. Ripinsky shall give a cost bond on the appeal for the sum of Two Hundred and Fifty (\$250.00) Dollars.

Dated this 3d day of June, 1911.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plffs., vs. Solomon Ripinski, Deft. Order Allowing Appeal. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By ———, Deputy. J. H. Cobb, Atty. for Deft. [30]

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Assignment of Errors.

Now comes the defendant Solomon Ripinsky by his attorneys and assigns the following errors committed by the Court on the trial and in the rendition of the decree in the above-entitled and numbered cause, and upon which he will rely in the Appellate Court, to wit:

First.

The Court erred in overruling the demurrer of the defendant to the plaintiffs' third amended complaint.

Second.

The Court erred in ruling and holding that the findings made by the District Court for Alaska on the former trial of this cause, against the defendant's title was the law, of the case, and precluded the Court from again examining into and passing upon the sufficiency of the evidence as to the defendant's title, and right to homestead entry.

Third.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

The land in controversy in this suit was on the 14th day of December, 1897, in the actual possession and occupancy of the defendant, Solomon Ripinsky, under a deed and claim of ownership hereinafter set

out. And afterwards on the said date the plaintiff, H. Fay and a number of other persons, none of whom are parties to this suit, or now claim any of the property in controversy, entered upon said property and forcibly and against the protests of the defendant ousted [31] him therefrom and said parties thereafter laid out a townsite, or attempted to, embracing the land in controversy, and had one Fogelstrom to make a plat of the same into lots, blocks, and streets. Some of the said premises was located as town lots, some as trade and manufacturing sites, some as homesteads and a part was not located at all. Other persons followed and locations have been made by the plaintiffs from that date promiscuously up till after the institution of this suit, but all such locations and occupancies as were made and asserted by the plaintiffs were against the protest and rights of the defendants.

Fourth.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

The ground in controversy was surveyed for one George Dickinson by an officer of the U. S. "James-town" in the year 1871. Dickinson at that time was acting for a concern known as the Northwest Trading Company and the tract so surveyed was at that time fenced and the corner posts set and buildings were constructed thereon and a position cleared and cultivated. In the year 1880 George Dickinson succeeded to interests of the Northwest Trading Co., and from that year to the year 1888 when he died, Dickinson and his family continued to occupy said premises,

residing thereon and cultivating a portion thereof, and the said Dickinson and his family were in the occupancy, possession and claim of said premises on the 17th day of May, 1884.

Fifth.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

In 1888 George Dickinson died and left surviving him his wife, Sarah Dickinson, his son William Dickinson. Mistress [32] Sarah Dickinson, was a native Alaska woman. The Dickinson family continued in the possession and claim of said premises until the 2d day of December, 1897, upon which date she sold and conveyed said premises to the defendant, Solomon Ripinsky and placed him in possession thereof and on the 21st day of December, William Dickinson also sold whatever interest he had in said premises to the defendant, said Ripinsky.

Sixth.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

On the 14th day of December, 1897, the plaintiff Harry Fay accompanied by some five or six other men, because of the report that a railroad was to be built from that point, went from the village of Chilcat, Alaska, about a mile distant from the property in controversy in this suit and against the protest and with a disregard of the rights and possession of the defendant entered upon said premises and made locations thereon of town lots, locations for trade, and manufacturing sites, etc., and thereafter had one

Fogelstrom lay out some six blocks of ground embracing the property in controversy, into blocks and lots, substantially as shown upon the plat attached to the third amended complaint.

Seventh.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

On June 23d, 1903, the defendant, Solomon Ripinsky, posted and filed a notice of location of his homestead embracing all the land in controversy and also the buildings and improvements then and now occupied by him and purchased from the Dickinsons. Thereafter on March 23-26, 1905, the defendant had Survey No. 573 made by U. S. Deputy Surveyor. C. E. Davidson, as his homestead claim, which survey was officially [33] approved on July 31, 1905, by the Surveyor General for Alaska. This survey embraced all the land in controversy. After the survey was made the defendant's notice of homestead location was amended to conform to the official field notes.

Eighth.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

Thereafter the defendant duly and regularly applied for patent for the said premises as his homestead, and published his notice as required by law, when the plaintiffs filed the adverse claim a copy of which is attached to the third amended complaint and instituted this suit.

Ninth.

The Court erred in refusing the prayer of the de-

fendant to make the following finding of fact:

Plaintiffs have failed to prove that any of them are citizens of the U. S. except the three Fays.

Tenth.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

The plaintiffs have failed to show any interest, jointly, severally or otherwise in any of the streets, avenues or alleys mentioned in the complaint.

Eleventh.

The Court erred in refusing the prayer of the defendant to make the following finding of fact:

The defendant, Solomon Ripinsky, is a citizen of the U. S. qualified to enter lands as a homestead and has fully complied with the law, entitling him to enter the premises in controversy.

Twelfth.

The Court erred in refusing the prayer of the defendant to make the following conclusions of law:
[34]

That the defendant's grantors were protected in their possession and claim to said premises by the 8th section of the act of May 17, 1884, and they conveyed a good title to the defendant which he was entitled to enter as his homestead under the act of Congress extending the homestead laws to Alaska.

Thirteenth.

The Court erred in refusing the prayer of the defendant to make the following conclusions of law:

The defendant is entitled to a judgment on his cross-complaint for the ground in controversy and for his costs.

Fourteenth.

The Court erred in that portion of finding No. 1 which reads as follows:

That all of the parties herein named except D. Butrich, E. J. Berger, Thomas Dryden, Peter Johnson, V. Reade and H. Rappolt are citizens of the United States and were at the time of the commencement of this action and had been for a long time prior thereto residents of the town of Haines and were at said time and for a long time prior thereto in possession and occupation of substantially all of that portion of Survey No. 573 at Haines, Alaska, included in Blocks 1, 2, 3, 4, 5 and 6 of the town of Haines as surveyed and platted by Walter Fogelstorm and were at all such times in possession of and using as streets and alleys the streets and alleys platted therein by him, except Lot 5 of Block 1 of said plat.

Fifteenth.

The Court erred in making finding number two which reads as follows:

That the defendant acquired no right, title or interest in or to any of the premises within said Survey No. 573 described in paragraph 1 of these Findings by virtue of the [35] alleged deed, dated December 2, 1897, and signed by S. Dickinson; and that the defendant acquired no right, title, interest, possession or right of possession in or to any of the lands included in said survey described in paragraph 1 of these Findings by virtue of the homestead location notice which he filed at the recording office at Skagway, Alaska, on the 23d day of June, 1903, and

the defendant acquired no right, title, interest, possession or right of possession in or to said premises by virtue of the amended location which he filed in the recording office at Skagway, Alaska, on the 18th day of December, 1905, and that the said defendant never has had any right, title or interest in or to any of said premises or survey except two small parcels hereinafter described, one of which he obtained by purchase and the other by actual occupation;

Sixteenth.

The Court erred in making finding number three which reads as follows:

That substantially all of the lands embraced within that portion of Survey No. 573 platted by said surveyor, Walter Fogelstorm, as the town of Haines and described in paragraph 1 of these Findings, except said Lot 5, Block 1, were at the commencement of this action and have been ever since and prior to June 23, 1903, in the actual, notorious and exclusive possession and occupation in good faith of the plaintiffs herein, their grantors and predecessors in interest, which said lands constitute the principal business section of the town of Haines, Alaska; and that the plaintiffs were at the time of the commencement of this action and have been at all times since the 23d day of June, 1903, occupying said lands in good faith for business and residential purposes; that these plaintiffs and their grantors and predecessors in interest have constructed buildings, such [36] as stores, hotels and residences, on said platted portion of said land, in value exceeding the sum of \$50,000; that the larger portion of said land em-

braced in said platted portion of said Survey No. 573 has been since June 23, 1903, and prior thereto occupied by the plaintiffs, their grantors and predecessors in interest, in severalty and that the remaining portions, *except* said Lot 5, Block 1, were occupied and used by the plaintiffs, their grantors and predecessors in interest, at the time of the commencement of this action and at all times since the 23d day of June, 1903, and prior thereto, as streets, alleys and thoroughfares.

Seventeenth.

The Court erred in making finding number four which reads as follows:

That the defendant has no right, title or interest in or to any of said lands included within Survey 573 at the time of the commencement of this action and never had any right, title, interest or possession in or to said lands, except two small tracts, one 20 feet wide by 50 feet long, known and described as Lot 5, Block 1 in said town of Haines and another small tract of land 100 feet wide by 150 feet long, which last parcel of land said defendant occupies as a residence and which is in the extreme easterly end of said survey 573 and is used by said defendant as a residence, store and garden, and said *land* mentioned tract of land of said defendant is east of said Block 1 in the town of Haines, Alaska; that said two tracts of land described are included within the lines embraced in said Survey 573 and were owned and occupied by the defendant at the time of the commencement of this action, but said two tracts of land are the only portions of said land embraced in Survey

No. 573 [37] which were owned and occupied by the defendant at the time of the commencement of this action, or were ever owned, possessed or occupied by said derendant.

Eighteenth.

The Court erred in entering the decree made herein, *ajudging* and decreeing that the defendant Solomon Ripinsky has no interest or right in any of the lands included in survey No. 573, excepting two small parcels thereof, and in refusing to enter in a decree for the defendant decreeing him to be the owner and entitled to the possession of all of said survey No. 573 and to enter the same as his homestead for the reason that under the undisputed proofs and evidences offered no other decree is, or could be sustained by such proofs.

And for the said errors and other manifest of records herein the defendant prays that the decree of the district court for Alaska be reversed and the cause remanded with instructions to the lower court to enter *an* decree in conformity with the prayer of the defendant's cross-complaint and for such other and further orders as to the court may seem proper. And for this he will ever pray, etc.

J. H. COBB,

Attorney for Defendant and Appellant.

[Endorsed]: No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plffs., vs. Solomon Ripinski, Deft. Assignment of Errors. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By _____, Deputy. J. H. Cobb, Atty. for Defts. [38]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS THAT we, Solomon Ripinsky, as principal, and R. P. Nelson and Henry Brie as sureties, are held and firmly bound unto G. W. Hinchman, William Holgate, John G. Morrison, J. A. Nettles, Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich, E. J. Berger, Ida Johnson, M. E. Handy, Fred Handy, G. C. De Haven, Tim Creedon, Benjamin A. Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Thomas Vogel, C. Bjornstad, R. Rappolt, Karen Bjornstad, M. V. McIntosh, Mary V. McIntosh, Jesse Craig, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Kabler, and V. Reade, in the full and just sum of Two Hundred and fifty (250.00) Dollars to be paid to the said plaintiffs, their attorneys, executors, administrators or assigns to which payment, well and truly to be made, We bind ourselves, our heirs, executors and assigns jointly and severally firmly by these presents.

Sealed with out seals and dated this 2d day of June,

the Year of Our Lord One Thousand Nine Hundred and Eleven.

WHEREAS lately at a session of the District Court for Alaska, Division No. 1 in a suit pending in said Court between the above-named plaintiffs and Solomon Ripinsky the above-named defendant a decree was rendered against the said Solomon Ripinsky, and the said Solomon Ripinsky having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the aforesaid suit rendered on the 29th day of May, 1911, and a citation directed to the above-named [39] plaintiffs and appellees is about to be issued, citing and admonishing them to be and appear at the U. S. Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California.

Now the condition of the above obligation is such that if the above Solomon Ripinsky shall prosecute his said appeal to effect and shall answer all costs that may be awarded against him, if he fail to make good his plea, then the above obligation is to be void; otherwise to remain in full force and virtue.

S. RIPINSKY,

By J. H. COBB,

His Atty. of Record.

R. P. NELSON,

HENRY BRIE.

Sufficiency of assurities on the foregoing bond approved this 3d day of June, 1911.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Original. No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Solomon Ripinsky, Defendant. Bond on Appeal. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By _____, Deputy. J. H. Cobb, Attorneys for Deft. Office: Juneau, Alaska. [40]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Citation.

United States of America,—ss.

The President of the United States to G. W. Hinchman, William Holgate, John G. Morrison, J. A. Nettles, Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich, E. J. Berger, Ida Johnson, M. E. Handy, Fred Handy, G. C. De Haven, Tim Creedon, Benjamin A. Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Thomas Vogel, C. Bjornstad, H. Rappolt, Karen Bjornstad, M. V. McIntosh, Mary V. McIntosh, Jesse Craig, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Kabler, and V. Reade, Greeting:

You are hereby cited and admonished to be and

appear at a U. S. Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in the state of California, within thirty days from the date hereof pursuant to an order allowing an appeal entered in the Clerk's office of the District Court for Alaska Division No. 1 in that certain suit No. 547—A in which Solomon Ripinsky is defendant and appellant and you are plaintiffs and appellees to show cause, if any there be, why the decree rendered against the said defendant and appellant as in the said order allowing an appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this the 3 day of June, 1911.

EDWARD E. CUSHMAN,

Judge Residing in the District Court. [41]

Service of the within Citation is admitted to have been made by delivery of a copy thereof, this 3d day of June, 1911.

L. P. SHACKLEFORD,

Attorneys for Plff.

[Endorsed]: Original. No. 547—A. In the District Court for Alaska, Division No. 1, at Juneau. *G. W. Hinchman et al.*, Plaintiffs, vs. *Solomon Ripinski*, Defendant. Citation. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By ———, Deputy. J. H. Cobb, Attorneys for Defendant. Office: Juneau, Alaska. [42]

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKI,

Defendant.

Order Extending Time to File Transcript.

Upon application of counsel for defendant is ordered that the time for filing the transcript of the record herein be, and the same is hereby, extended to August 15th, 1911.

Dated June 3d, 1911.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plffs., vs. Solomon Ripinski, Deft. Order Extending Time to File Transcript. Filed Jun. 3, 1911. E. W. Pettit, Clerk. By ———, Deputy. J. H. Cobb, Atty. for Deft. [43]

*In the District Court for Alaska, Division No. 1, at
Juneau.*

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKI,

Defendant.

Order [Waiving Copying of Printed Record].

Upon application of the parties hereto, it is ordered that the Clerk of this court, in making up the transcript of the record for the appellate court in this cause, do not transcribe the printed record contained in the bill of exceptions, but insert at the proper place in said transcript a duplicate of such printed record furnished by counsel.

Dated this June 3d, 1911.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Original No. 547-A. In the District Court for Alaska, Division No. 1, at Juneau. G. W. Hinchman et al., Plaintiffs, vs. Solomon Ripinski, Defendant. Order as to Making Transcript. Filed June 3, 1911. E. W. Pettit, Clerk. J. H. Cobb, Attorneys for Deft. Office: Juneau, Alaska. [44]

*In the United States District Court for the District
of Alaska, Division No. 1, at Juneau.*

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Bill of Exceptions.

Be It Remembered, That the above-entitled cause

came on duly and regularly to be heard, upon rehearing, before the Honorable EDWARD E. CUSHMAN, Judge of said court, on Tuesday, the 16th day of May, 1911;

The plaintiffs herein being represented by LEWIS P. SHACKLEFORD, Esq.,

The defendant being represented by JOHN H. COBB, Esq.,

WHEREUPON a statement of the case was made to the Court by the respective attorneys and the following additional proceedings had: [45]

[Proceedings Had May 16, 1911.]

Mr. SHACKLEFORD.—On this, the second trial of this cause, we ask the Court to take judicial notice of the printed record in the United States Circuit Court of Appeals for the Ninth Circuit in case Number 1782, pages 1 to 929, inclusive, being the case of Solomon Ripinsky, appellant, versus G. W. Hinchman et al., appellees, and being the identical case now on trial before the Court.

By the COURT.—The record contains all the evidence admitted on the original trial?

Mr. SHACKLEFORD.—Yes, sir.

By the COURT.—It will be so ordered.

Mr. SHACKLEFORD.—We also ask the Court to take judicial notice of the opinion on the petition for rehearing, filed in the United States Circuit Court of Appeals March 9, 1911; and also the previous opinion rendered upon appeal filed October 3, 1910, and reported in the 181 Federal at page 786.

By the COURT.—It will be so ordered.

Mr. SHACKLEFORD.—We also ask the Court to

take judicial notice of the original complaint in Cause #547-A, being this case, filed on July 2, 1906; summons issued on July 2, 1906; order on motion, signed Royal A. Gunnison, Judge, to make more definite and certain, filed December 10, 1906; order extending time to file amended complaint, signed Royal A. Gunnison, Judge, dated December 26, 1906; amended complaint filed March 28, 1907; order signed James Wickersham, Judge, filed May 7, 1907, striking the portions of plaintiffs' complaint referring to proceedings in the Land Office, on motion of the defendant, and containing the exceptions of the plaintiff thereto; second amended complaint—it is [46] already in the record. The proceedings just referred to do not appear in the printed record and are therefore offered for the judicial notice of the Court at this time for the purpose of showing that the form of the complaint was not voluntarily changed but changed under orders of the Court, to which we excepted.

By the COURT.—This is an offer of evidence, is it?

By Mr. SHACKLEFORD.—I do not think they are evidence. I want them before the Court, though, so they will be a part of the Bill of Exceptions the next time.

By the COURT.—You may make your offer as regards the mandate and judgment on mandate. You will take that up by supplemental record.

Mr. SHACKLEFORD.—I will also offer the mandate of the Circuit Court of Appeals and the judgment on the mandate, coupled with the statement that we shall move at the proper time during the pro-

ceedings to retax costs adjudged under the mandate and under the judgment on the mandate.

By the COURT.—It will be admitted and considered, together with the filing marks on the mandate.

Mr. SHACKLEFORD.—Judge Lyons was the attorney who conducted this case and I am not entirely familiar with the record myself. It has suggested itself to me, in order to get a clear understanding of the case, it will probably be to our advantage to read the testimony. I want to consult the Court's convenience about time, but I am perfectly willing to read the plaintiffs' testimony.

By the COURT.—You will be controlled by your own judgment as to what is best in the matter.

Whereupon Mr. Shackleford read the testimony on behalf of the plaintiffs in the previous case and which is found in [47] the printed record in the United States Circuit Court of Appeals for the Ninth Circuit, in Case Number 1782, being the case of Solomon Ripinsky, appellant, versus G. W. Hinchman et al., appellees.

Mr. SHACKLEFORD.—The plaintiffs offer in evidence for the inspection of the Court the original deed, being Defendant's Exhibit #7, for the purpose of demonstrating the method of interlineation on the margin of the deed and the manner in which the same was drawn and executed; and the plaintiffs also object to all oral testimony herein concerning the conveyance of the original trading site, or the purchase of the original trading site from the *Norwest* Trading Company, to Dickinson as being incompetent, irrele-

vant and immaterial and not the best evidence and as hearsay. And we also object to and move to strike all testimony concerning alleged conversations between the defendant herein, Ripinsky and the Dickinsons as to the acquisition of the said title from the Northwest Trading Co., move to strike the same and also to strike the evidence found on pages 595 and 596, in which the defendant Ripinsky attempts to testify to the date of the transfer from the Northwest Trading Co. to the defendant as occurring in the commencement of 1884.

By the COURT.—The original deed will be admitted and submitted. The motions will be denied and exceptions allowed.

Mr. COBB.—The defendant asks the Court to take judicial notice of the order of this Court found on page 96 of Volume 8 of the Journal, dated July 15, 1899, reading as follows:

“Saturday, July 15, 1899.

In the Matter of the Appointment of SOLOMON
RIPINSKY as United States Commissioner
for the District of Alaska, at Haines.

Whereas, it satisfactorily appearing to the Court that a [48] United States Commissioner should be appointed for Haines, in the District of Alaska, and it further appearing that Sol Ripinsky is a resident of said Haines, is a citizen of the United States over the age of twenty-one years and is a proper and suitable person to be appointed United States Commissioner, to be located and to reside at Haines, Alaska;

It is therefore ordered that the said Sol Ripinsky be and he is hereby appointed a United States Com-

missioner for the District of Alaska, to reside at Haines, Alaska, and authorized and empowered to fulfill the duties of the office according to law, with all the powers, privileges and emoluments of right pertaining to him, during the pleasure of this Court and until his successor is appointed and qualified."

Mr. SHACKLEFORD.—It seems that the defendant in this case is raising a new issue about the citizenship and I may want to offer some evidence before the trial is closed.

By the COURT.—That is concerning—

Mr. SHACKLEFORD.—That is concerning both parties.

Mr. COBB.—There has been no issue raised as to the citizenship further than was in the case before.

Mr. SHACKLEFORD.—It is the first time I have noticed it.

[Proceedings Had May 18, 1911.]

May 18, 1911.

Mr. SHACKLEFORD.—We desire to call Mr. H. Fay for the purpose of proving the citizenship of most of the plaintiffs in this case.

Mr. COBB.—The defendant objects for the following reasons: That this case was not sent back for retrial or the taking of further evidence, but only for the Court to enter the proper judgment under the opinions of the Court in case [49] the pleadings should be reformed as intended in the second opinion; for the further reason that the testimony was taken by a referee, all of the record, and there is no motion made to recommit or take further testimony and it is now too late to make the proof; for the further reason that when the testimony was taken the issue

as to the citizenship of the plaintiffs was then made and no testimony offered.

By the COURT.—It is not for the purpose of introducing evidence extensively, is it?

Mr. SHACKLEFORD.—No, sir; Mr. Cobb has started in since these pleadings were reformed to make a question about citizenship and the only thing I ask is the same privilege he has been granted with reference to his part of the evidence.

By the COURT.—I am not absolutely sure what shape the record in this case is now in, whether when the pleadings were reformed the cause might not have been recalled to the Court of Appeals by a recall of the mandate and the further disposing of the petition for rehearing, or whether it should again be appealed after its decision, the decision in this court upon the rendition of this evidence or the resubmission of it. However that may be, the evidence will be admitted.

Mr. COBB.—Before the Court rules upon it, I want to correct a statement of counsel that I have introduced a new issue into it. In the second amended complaint tried before, they expressly pleaded the citizenship of the townsite claimants and there is a denial of that.

Mr. SHACKLEFORD.—You do not claim that you offered any evidence of Mr. Ripinsky's citizenship on the former trial?

Mr. COBB.—The evidence is in the record; I have introduced none this time; I have merely called the attention of the [50] Court to it.

The objection was by the Court overruled; to which ruling defendant excepts—exception allowed.

[Testimony of H. Fay, for Plaintiffs.]

H. FAY, called and sworn as a witness in behalf of the plaintiffs, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. You are one of the parties to this case?

A. Yes, sir.

Q. I am going to call off the names of the plaintiffs in this case to you and whenever your knowledge permits you to state, why you may state whether or not they are citizens.

Mr. COBB.—I shall object to that method of examination as not being fair; it is merely calling for his conclusion without explaining what his knowledge is, except what may be in his own mind.

By the COURT.—You may cross-examine.

(By Mr. SHACKLEFORD.)

Q. Do you know whether Mr. Hinchman is a citizen? A. Yes, sir.

Q. Is he? A. Yes, sir.

Q. William Holgate? A. Yes, sir.

Q. John G. Morrison? A. Yes, sir.

Q. J. A. Nettles? A. Yes, sir.

Q. Cortz Ford? A. Yes, sir.

Q. Tom Valeur? A. Yes, sir. [51]

Q. R. M. Odell? A. Yes, sir.

Q. D. Butrich?

A. I don't know with respect to him.

Q. E. J. Berger?

A. I am not sure about Berger.

Q. Ida Johnson? Who is Ida Johnson?

(Testimony of H. Fay.)

A. She is a woman that owns a house there; Stout is agent for her.

Q. The lot was originally located by her husband?

A. No, I believe she bought it.

By the COURT.—Keep to the citizenship.

Q. Is she a native woman?

A. No, she is a white woman.

Q. M. E. Handy? A. Yes, he is a citizen.

Q. Fred Handy? A. Yes, sir.

Q. G. C. Dehaven? A. Yes, sir.

Q. Tim Creedon? A. Yes, sir.

Q. Benjamin A. Mahan? A. Yes, sir.

Q. Thomas Dryden?

A. No, Tom Dryden is not a citizen.

Q. Ed Fay? A. Yes, sir.

Q. James Fay? A. Yes, sir.

Q. H. Fay? A. Yes, sir.

Q. W. W. Marne? A. Yes, sir.

Q. Thomas Vogel?

A. Yes, sir; that should be Tim Vogel.

Q. C. Bjornstad? A. Yes, sir.

Q. H. Rappolt?

A. I don't know about Rappolt. [52]

Q. Karen Bjornstad?

A. She is a mother of Carl Bjornstad; he represented her property.

Q. M. V. McIntosh? A. That is Mrs. McIntosh.

Q. What about her being an American citizen?

A. She is an American citizen.

Q. Mary V. McIntosh?

A. Yes, that is her daughter; she is an American citizen.

(Testimony of H. Fay.)

Q. Jesse Craig?

A. He is a citizen of the United States.

Q. E. A. Adams? A. Yes, sir.

Q. J. W. Martin? A. Yes, sir.

Q. A. J. Dennerline? A. Yes, sir.

Q. S. J. Weitzman? A. Yes, sir.

Q. Peter Johnson?

A. I am not sure about Johnson.

Q. Kate Kabler?

A. Mrs. Kabler lived in Juneau here for quite a while.

Q. V. Reade? A. I am not sure about Reade.

Mr. SHACKLEFORD.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. When did you first become acquainted with William Holgate?

A. Well, I don't know as to the time when he first came there.

Q. Well, about when, Mr. Fay?

A. Well, it would be guesswork now; he has been there I should judge about five or six years.

Q. About five or six years? A. Yes, sir. [53]

Q. You didn't know him before that?

A. No, sir.

Q. You don't know where he was born, of your own knowledge? A. No, sir.

Q. You don't know whether he has been naturalized or not? A. No, sir.

Q. How do you know he is a citizen then, of your own knowledge?

(Testimony of H. Fay.)

A. Well he has voted there at Haines during my time.

Q. That is all that you base it upon?

A. Well, yes.

Q. For all you know he may have been born in some foreign country and never was naturalized?

A. Yes, sir.

Q. How long have you known George W. Hinchman?

Q. Well, since Hinchman came to the country, he has been there probably eight or nine years, probably more.

Q. You don't know where he was born?

A. No, sir.

Q. You don't know whether he was born in a foreign land or in America? A. No, sir.

Q. John G. Morrison, how long have you known him?

A. Well, I have known him about eight or nine years.

Q. Do you know where he was born?

A. No, sir.

Q. You do not know whether it was in a foreign land or America? A. No, sir.

Q. J. A. Nettles, how long have you known him?

A. About the same time, I guess.

Q. Do you know where he was born? [54]

Q. For all you know he may have been born in some foreign land? A. Yes, sir.

Q. Cortz Ford—how long have you known him?

A. I have known him about seven or eight years,

(Testimony of H. Fay.)

probably more, eight or nine, eight years, I guess it was all of that.

Q. You don't know where he was born?

A. No, sir.

Q. For all you know he may have been born in some foreign land? A. Yes, sir.

Q. Of foreign parents? A. Yes, sir.

Q. Tom Valeur—do you know where he was born?

A. No, sir.

Q. For all you know he may have been born in some foreign land? A. Yes, sir.

Q. And never naturalized? A. Yes, sir.

Q. R. M. Odell, how long have you known him?

A. Oh, about nine years or ten years.

Q. Do you know where he was born?

A. No, sir.

Q. As far as you know he may be a citizen of some foreign land?

A. Well, I don't think he would be a citizen of some foreign land if he would vote there in Haines.

Q. That is all you know about it? A. Yes, sir.

Q. Apart from that, though, as far as you know he may be a citizen of some foreign land? [55]

A. Yes, sir.

Q. D. Butrich you say is not a citizen?

A. I say I don't know whether he is or not.

Q. E. J. Berger, you say you don't know?

A. No.

Q. Ida Johnson you don't know—how long have you known M. E. Handy?

A. Nine or ten years, about.

(Testimony of H. Fay.)

Q. Do you know where he was born?

A. No, sir.

Q. You don't know but what he might have been born in some foreign land? A. No, sir.

Q. Of foreign parents? A. Yes, sir.

Q. Fred Handy is a brother of M. E. Handy, is he?

A. He is a son.

Q. He is a son? A. Yes, sir.

Q. Do you know where he was born?

A. No, sir.

Q. So far as you know he might have been born in a foreign land? A. Yes, sir.

Q. G. C. DeHaven, how long have you known him?

A. About ten years.

Q. Do you know where he was born? A. No, sir.

Q. As far as you know he might have been born in some foreign land? A. Yes, sir.

Q. Tom Creedon, do you know where Tim was born? [56] A. No, I do not.

Q. As far as you know he might have been born in some foreign land? A. Yes, sir.

Q. B. A. Mahan, how long have you known Mr. Mahan? A. About six or seven years.

Q. That is as long as he has been in Haines?

A. Yes, sir.

Q. As far as you know he may have been born in some foreign land? A. Yes, sir.

Q. Thomas Dryden you say is not a citizen?

A. I don't think he is.

Q. Ed Fay and James Fay and H. Fay do you know are citizens? A. Yes, sir.

(Testimony of H. Fay.)

Q. Ed and James are your brothers?

A. Yes, sir.

Q. W. W. Warne, how long have you known him?

A. Well, he was in the country when I came, he was at Haines when I came.

Q. He has been gone eight or ten years?

A. Yes, he has been gone quite *while*.

Q. Do you know where he was born?

A. No, sir.

Q. As far as you know he may have been born in a foreign land? A. Yes, sir.

Q. And of foreign parentage? A. Yes, sir.

Q. Thomas Vogel or Tim Vogel as he is sometimes called, how long have you known Tim?

A. Ten or eleven years. [57]

Q. Do you know where he was born?

A. No, sir.

Q. As far as you know he may have been born in a foreign land? A. Yes, sir.

Q. And of foreign parents? A. Yes, sir.

Q. C. Bjornstad, how long have you known Mr. Bjornstad? A. About ten years.

Q. Do you know where he was born? A. No, sir.

Q. So far as you know he may have been born in a foreign land? A. Yes, sir.

Q. Of foreign parents?

By the COURT.—He didn't say Mr. Bjornstad was a citizen, did he?

The WITNESS.—Yes, sir.

Q. H. Rappolt, I believe you stated you did not know whether Rappolt was a citizen or not?

(Testimony of H. Fay.)

A. No, sir.

Q. Karen Bjornstad, do you know where she was born?

A. No, sir; that is the mother of Carl Bjornstad?

Q. She is the mother of Carl and you don't know where either one of them was born?

A. Well, they told me—

Q. I mean of your own knowledge?

A. No, I do not.

Q. And so far as you know they may have been born in a foreign land, of foreign parentage?

A. Yes, sir.

Q. M. V. McIntosh, how long have you known her?

A. About seven or eight years. [58]

Q. Do you know where she was born?

A. No, sir.

Q. So far as you know she may have been born in a foreign land of foreign parentage?

A. Yes, sir.

Q. Mary V. McIntosh is a daughter of the other you said? A. Yes, sir.

Q. Do you know where she was born?

A. No, sir.

Q. So far as you know she may have been born in a foreign land, of foreign parentage? A. Yes, sir.

Q. Jesse Craig, do you know where he was born?

A. No, sir.

Q. So far as you know he may have been born in a foreign land and of foreign parentage?

A. Yes, sir.

Q. E. A. Adams, how long have you known him?

(Testimony of H. Fay.)

A. About eleven years or such a matter.

Q. Do you know where Mr. Adams was born?

A. No, sir.

Q. So far as you know he may have been born in a foreign land and of foreign parentage?

A. Yes, sir.

Q. J. W. Martin, how long have you known Martin? A. About twelve years.

A. Do you know where he was born?

A. No, sir.

Q. So far as you know he may have been born in a foreign land and of foreign parentage?

A. Yes, sir. [59]

Q. A. J. Dennerline, do you know where he was born? A. No, sir.

Q. As far as you know he may have been born in a foreign land and of foreign parentage?

A. Yes, sir.

Q. S. J. Weitzman, do you know where Mr. Weitzman was born? A. No, sir.

Q. So far as you know he may have been born in a foreign land and of foreign parentage?

A. Yes, sir.

Q. Peter Johnson, you say you don't know; Mrs. Kate Kabler, you say you don't know?

A. No, I do not; she lives in Juneau.

Q. And V. Reade you don't know?

A. I don't know about Reade.

Mr. COBB.—That is all.

(By Mr. SHACKLEFORD.)

Q. All these men that have been mentioned have

(Testimony of H. Fay.)

exercised the privileges of citizenship up there, haven't they?

Mr. COBB.—We object as not the best evidence.

By the COURT.—It is leading.

Q. State what you do know about their exercising the privilege of citizenship.

Mr. COBB.—I object to that as calling for a conclusion of the witness.

Objection overruled; to which ruling counsel for defendant excepts; exception allowed.

Q. Just state what you know about their exercising the privileges of citizenship.

A. Why, they exercise the privileges of citizenship. [60]

Mr. SHACKLEFORD.—That is all, Mr. Fay, at this time.

May 19, 1911.

[Testimony of H. Fay, for Plaintiffs (Recalled).]

H. FAY, recalled.

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. Mr. Fay, you were one of the citizens committee in charge of the protection of their rights up there?

A. Yes, sir.

Q. I will ask you to state whether, if you know, *applicati* was made by the citizens of Haines for a townsite survey?

Mr. COBB.—We object as not the best evidence; if they *mad* an application it would necessarily be on record.

Mr. SHACKLEFORD.—I will explain to the

(Testimony of H. Fay.)

Court exactly the reason I ask Mr. Fay this question. Mr. Stowell's record shows probably 30 or 40 letters on the subject back and forth and finally the request was rejected. I don't want to encumber the record with a lot of correspondence. I can have it certified and file it with the Court if necessary, but I simply want to show that the application was made.

Mr. COBB.—Counsel has stated the objection to it, as well as it could be stated. In the first place it is a matter of record; in the next place if they have the record here it will show that the request was rejected.

Mr. SHACKLEFORD.—I will ask leave to file, after the argument of the case, a certified copy of the correspondence and withdraw the witness.

Mr. COBB.—I shall object to that, it is a reopening of the case. This case was tried before a Referee; they plead that in the original case, and for the further reason that so far as the plaintiffs are concerned in this case, the question [61] of their right, title and interest is no longer an open one; it has been finally foreclosed by the judgment of the Appellate Court, the court of last resort.

By the COURT.—That is all, Mr. Fay. I will rule on the offer of the evidence when the offer is made. It will be ruled on when you offer it the same as though it was offered now.

Mr. COBB.—Of course if the Court should admit it, we will reserve the right to introduce any further testimony we might deem advisable.

By the COURT.—Very well.

AFTERNOON SESSION.

Mr. SHACKLEFORD.—In this Haines case I desire to offer in evidence a certified copy of letter of July 17, 1905, W. A. Richards, Commissioner of the General Land Office to the U. S. Surveyor General at Sitka, Alaska, certified to by the Surveyor General and ask to have it marked. It is marked Exhibit "A," 2d Hearing.

By the COURT.—It will be admitted.

Mr. SHACKLEFORD.—I will read it.

[Exhibit "A"—20 Hearing.]

"COPY.

E

C. L. D. B.

A. W. B.

110273-1905

Department of the Interior

General Land Office,

Washington, D. C., July 17, 1905.

Address only the

Commissioner of the General Land Office.

Subject: Survey of Haines Townsite.

U. S. Surveyor General,

Sitka, Alaska.

Sir:

I have received your letter dated June 15, 1905, transmitting [62] a copy of the petition of George Vogel and 57 other settlers at Haines, for the official survey of the boundary of a townsite, also copy of the proposals of Deputy C. E. Davidson for making surveys, addressed to Mr. C. Ford of Haines.

The petition has been favorably considered, although any further action should be contingent upon

the action that may be taken upon a homestead entry that may be made by Sol Ripinsky under Survey No. 573.

If said survey shall be approved in your office, as authorized, the applicant's right to make entry would be next considered; and the Department should not incur the expense of a townsite survey under the present uncertainty of these conditions.

The bid of Mr. Davidson shows that he is not aware that the work must be done under two different proposals which cannot be combined as he has done. If the survey is authorized, the boundary will be done under contract or instructions from your office, and paid for by the United States; but the sub-division must be done under contract with the trustee representing the people, and paid for from proceeds of sale. You will advise bidders accordingly.

Moreover, while the Haines people may choose to award the work to none but Deputy Davidson, the exterior line must be a subject of proper notices to deputies who are near enough to be probable bidders. In the survey of the boundary, the condition proposed by this deputy as to citizens paying his expenses could not be considered. Neither will you approve a proposition for a certain sum for field work and a per diem for unlimited time for making plats, as found in his bid.

From all the above, it is evident that the townsite boundary cannot very soon be provided for.

Very respectfully,

(Signed) W. A. RICHARDS,

Commissioner. [63]

J C P

Office of the U. S. Surveyor General.

Juneau, Alaska, May 19, 1911.

I certify that the foregoing and attached transcript of a letter from the Commissioner of the General Land Office to the U. S. Surveyor General of Alaska, dated July 17, 1905, "Subject: Survey of Haines Townsite" is a true and correct copy of said letter, and of the whole thereof, now on file in this office.

(Signed) WM. L. DISTIN,

U. S. Surveyor General for Alaska. [64]

And after the evidence had all been heard by the Court the defendant prayed the Court to find as follows:

[Findings Requested by Defendant.]

1st. The land in controversy in this suit was on the 14th day of December, 1897, in the actual possession and occupancy of the defendant, Solomon Ripinsky, under a deed and claim of ownership hereinafter set out. And afterwards on the said date the plaintiff, H. Fay and a number of other persons, none of who are parties to this suit, or now claim any of the property in controversy, entered upon said property and forcibly and against the protests of the defendant ousted him therefrom and said parties thereafter laid out a townsite or attempted to, embracing the land in controversy, and had one Fogelstrom to make a plat of the same into lots, blocks and streets. Some of the said premises was located as town lots, some as trade and manufacturing sites, some as homesteads and a part was not located at all. Other persons followed and locations have been made by the plaintiffs from that date

promiscuously up till after the institution of this suit, but all such locations and occupancies as were made and asserted by the plaintiffs were against the protest and rights of the defendant.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

2d. The ground in controversy was surveyed for one George Dickinson by an officer of the U. S. "Jamestown" in the year 1871. Dickinson at that time was acting for a concern known as the Northwest Trading Company and the tract so surveyed was at that time fenced and the corner posts set and buildings were constructed thereon and a portion cleared and cultivated. In the year 1880 George Dickinson succeeded to [65] interests of the Northwest Trading Co. and from that year to the year 1888 when he died, Dickinson and his family continued to occupy said premises, residing thereon and cultivating a portion thereof, and the said Dickinson and his family were in the occupancy, possession and claim of said premises on the 17th day of May, 1884.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

3d. In 1888 George Dickinson died and left surviving him his wife, Sarah Dickinson, his son William Dickinson. Mistress Sarah Dickinson, was a native Alaska woman. The Dickinson family continued in the possession and claim of said premises until the 2d day of December, 1897, upon which date

she sold and conveyed said premises to the defendant, Solomon Ripinsky and placed him in possession thereof and on the 21st day of December, William Dickinson also sold whatever interest he had in said premises to the defendant, said Ripinsky.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

4th. On the 14th day of December, 1897, the plaintiff Harry Fay, accompanied by some five or six other men, because of the report that a railroad was to be built from that point, went from the village of Chilcat, Alaska, about a mile distant from the property in controversy in this suit and against the protest and with a disregard of the rights and possession of the defendant, entered upon said premises and made locations thereon of town lots, locations for trade, and manufacturing sites, etc., and thereafter had one Foglestrom lay out some six blocks of ground embracing the property in controversy, into blocks and lots, substantially as shown upon the plat attached to the third amended complaint. [66]

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

5th. On June 23d, 1903, the defendant, Solomon Ripinsky, posted and filed a notice of location of his homestead embracing all the land in controversy and also the buildings and improvements then and now occupied by him and purchased from the Dickinsons.

Thereafter on March 23-26, 1905, the defendant had survey No. 573 made by U. S. Deputy Surveyor, C. E. Davidson, as his homestead claim, which survey was officially approved on July 31, 1905, by the Surveyor General for Alaska. This survey embraced all the land in controversy. After the survey was made the defendant's notice of homestead location *location* was amended to conform to the official field-notes.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

6th. Thereafter the defendant duly and regularly applied for patent for the said premises as his homestead, and published his notice as required by law, when the plaintiffs filed the adverse claim a copy of which is attached to the third amended complaint and instituted this suit.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

7th. The land in controversy in this suit is claimed by the plaintiffs in severalty and not jointly, and embraces the following lots and blocks shown on the plat "Exhibit No. 1," in so far as the same is in conflict with the U. S. Survey No. 573, to wit:

Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 14, 15, 16, and [67] 17, of Block 1.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Block 2.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12 of Block 3.

Lots 1, 3, 4, 5, and 6 of Block 4.

Lots 1, 2, 3, 4, 5, and 6 of Block 5.

And lot 2 of Block 6.

The balance of the land embraced within Survey No. 573 is not claimed by any of the plaintiffs.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

8th. Plaintiffs have failed to prove that any of them are citizens of the U. S. except the three Fays.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

10th. The plaintiffs have failed to show any interest, jointly, severally or otherwise in any of the streets, avenues or alleys mentioned in the complaint.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to find as follows:

11th. The defendant, Solomon Ripinsky, is a citizen of the U. S., qualified to enter lands as a homestead and has fully complied with the law, entitling him to enter the premises in controversy.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

[Conclusion Etc. Requested by Defendant.]

The defendant further prayed the Court to conclude as matter [68] of law as follows:

1st. That the defendant's grantors were protected in their possession and claim to said premises by the 8th section of the act of May 17, 1884, and they conveyed a good title to the defendant which he was entitled to enter as his homestead under the act of Congress extending the homestead laws to Alaska.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

The defendant further prayed the Court to rule as matter of Law as follows:

3d. The defendant is entitled to a judgment on his cross-complaint for the ground in controversy and for his costs.

But the Court refused said prayer, to which ruling of the Court the defendant then and there excepted.

And thereafter the Court having fully considered the case announced its opinion as follows: [69]

[Opinion.]

By the COURT.—In this Hinchman vs. Ripinsky case I feel constrained to decide the case largely, if not entirely, upon what I consider the law of the case. The case was started before Judge Gunnison, a suit to quiet title of these plaintiffs against the defendant, started as an adverse suit, but upon the part of the defendant two or more motions were made, one to make more specific by setting out the particular parcels of ground within the alleged townsite claimed by the plaintiffs and the other striking out all reference to the proceedings in the land office showing it to be an adverse suit. These motions were granted. When the evidence was all in, being taken before the referee, Judge Gunnison decided,

making general findings in favor of the plaintiffs and making general findings against the defendant, particularly finding that the defendant did not obtain any right by reason of the transfer from the Dickinsons and that he did not have any right other than the right in two particular tracts, small tracts, that were conceded to him by the pleadings. From this decision an appeal was taken by the plaintiffs to the Court of Appeals and in the review of the case by the Court of Appeals, they go generally into two propositions; First, the defendant's demurrer that had been interposed below to the misjoinder of parties plaintiff; and Second, into the character of the title of plaintiffs.

The Court of Appeals decided: First, that there was a misjoinder of plaintiffs in that there was nothing common in their title; that although they were all fighting Mr. Ripinsky, that some claimed title by possession, some claimed title by location of a lot and some claimed title by location of a trading and manufacturing site, and some by having bought somebody else's possession and in various other ways, and their rights being so diversified and several, that they could not join in [70] one suit against the defendant. Second, they decided—I will read from the opinion:

“From the facts as portrayed by the testimony, it appears that some of these complainants have no shadow of claim of title, except mere possession. They have no location under the alleged townsite of Haines, no deed from previous holders, if this were sufficient, and no pretense that they are claiming under authority of Congress. It is not even shown that

a site has ever been entered for townsite purposes on pursuance of the laws of Congress as extended to Alaska. Section 11, Act of March 3, 1891, c. 561, 26 Stat. 1099 (U. S. Comp. St. 1901, P. 1467); 1 Fed. St. Ann. 53. And the extent of the right acquired in alleged pursuance of the townsite statute is that of mere possession only, with the privilege, perhaps of regularly entering a townsite in the future, if the citizens so desire when their rights will depend upon prior possession. It does not seem to us that such possession exhibits a sufficient equitable title upon which to base a suit to remove a cloud, and we so hold."

Now, after so deciding, upon the petition for rehearing in which it was called to the attention of the Appellate Court that this had been instituted as an adverse suit, after the defendant's application in the land office and the advertisement for adverse claimants and the filing of an adverse, the Court then held that the complaint was sufficient, as follows:

"It appears from the original complaint that the complainants attempted to pursue the requirements of the statutes, and that it was the endeavor to settle an adverse claim to the claim of the defendant Ripinsky in pursuance thereof. Among other things, it is shown that Ripinsky filed his application for patent on the 2d day of March, 1906, and thereafter published notice; and on June 3, 1906, and within 30 days after the period of publication of said notice, the plaintiffs filed in the land office their notice of adverse claim, a copy of which is annexed to the complaint. If that complaint was filed immediately after the date of its verification, the action would have been com-

menced within the requisite 60 days. So that for all the purposes of prosecuting an action for the quieting of the title as adverse claimants, under the statutes (Sec. 10), the complaint appears to be sufficient."

It would seem that that left the case in this shape, that there was little for this Court to do, the issues and evidence being substantially the same, but to *martial* the different findings and rulings of the lower court and the Court of Appeals [71] into one decree. It may be that the proper proceedings would have been after the pleadings were reformed to move in the Court of Appeals for a recall of the mandate and let that Court decide this case as it appears to have intimated at the close of their decision.

After having ruled that the original complaint was sufficient on an error that was not assigned, indeed, an error committed against the eventually prevailing part, the Court of Appeals must have been then in this position, that they could not anticipate what the issues would be on the pleadings as reformed, or what the evidence might be, if any were taken.

It was, therefore, probably considered by it illogical for that Court in anticipation to decree that its finding regarding the sufficiency or insufficiency of plaintiffs' title would apply to the new pleadings and the new proofs. It is probably true as a general rule that on an order for rehearing all parts of the old opinion not expressly adopted are abandoned but this case would seem to be an exception to that rule.

The decision of Judge Gunnison that the defendant had no right has been in no way reversed, therefore it is the opinion of this Court that that is a part of

the law of this case, in so far as it is applicable to the new issues and the new proof, both of which so far as the claim of the defendant is concerned have not been materially changed by the reforming of the pleadings or by the additional evidence that has been offered.

This Court is not clear that on an adverse suit brought to quiet title that any less title or any different title is sufficient to maintain such an adverse suit than that that would maintain a suit to quiet title under our statutes. In fact, if there is any difference, the stricter rule would prevail in the former case, for, in an adverse suit, the plaintiff, to [72] succeed, must not only show a better title than the defendant but show title also as against the United States.

The Court of Appeals have decided that under our statute the evidence in this case was not sufficient to warrant a decree in favor of plaintiffs. Therefore, the finding of that Court being that the title of the plaintiff was insufficient to give them a decree removing a cloud or quieting the title, this Court will hold that that is the law of this case as far as the plaintiffs are concerned. The obstacles in the way of plaintiffs' title pointed out by the Court of Appeals, on account of there being no boundaries to the alleged town or townsite, have not been removed on the last hearing, likewise no period of time when the alleged title is initiated. The case cited in the petition for rehearing was one pending after townsite entry, between the trustee and the *cestui que trust*.

This being an adverse suit in which both sides may

lose except as to costs, the decree will be to that effect; the defendant will recover costs.

The finding of Judge Gunnison regarding plaintiffs' possession or occupancy—you will have to work out a finding to modify that as modified by the Court of Appeals, eliminating particularly those parts outside the Foglestrom plat. Under the regulations of the land office the survey of the boundaries of a townsite is made by the land office and paid for out of public money. It seems by the evidence that was offered by the plaintiffs on this trial that Vogel and 57 others had petitioned, though the petition is not in evidence, that such a survey be made, but the land office, while approving in general terms of their application, had declined to go to the expense of this survey until Ripinsky's right to this homestead had been determined and until that was done, as pointed out by the Court of Appeals, this town of Haines had no boundaries, had no limits. [73] it was an indefinite settlement. The Court will adopt the Fogelstrom plat as defining at that time the limits of their claim, but the Court will hold that as to the ground included in Survey 573 that fell outside of the Fogelstrom plat, they had or made no claim except by this suit; their claim of occupancy or possession of that will be rejected.

The Court will find that the plaintiffs that Mr. Fay testified to as being citizens of the United States were citizens of the United States. The Court will find that Mr. Ripinsky is a citizen of the United States.

And thereupon the defendant by its counsel excepted to the ruling and opinion of the Court that the

decision of Judge Gunnison that the defendant had no right has been in no way reversed, therefore it is the opinion of this Court that that is a part of the law of this case in so far as it is applicable to the new issues and the new proofs, both of which so far as the claim of the defendant is concerned will not be materially changed by the reforming of the pleadings or by the additional evidence that has been offered; on the ground that the same was not the law and that it was the duty of the Court to make up findings as to the defendant's title from the evidence before it and said exceptions allowed. [74]

And the above and foregoing, to wit: the testimony and proofs contained in the printed record of this case on the former appeal, No. 1782 in the said Appellate Court, which testimony is contained in the said printed record from and inclusive of page 57 thereof down to and inclusive of page 886; the oral evidence of H. Fay, and the record from the Surveyor General's Office and the record of this Court as to the citizenship of the defendant, was all the evidence offered by the parties hereto, or received by the Courts; and the said evidence, and the foregoing exceptions of the defendant are hereby certified by me to be correct, are allowed, ordered filed, and made a part of the record of this case.

And it is further ordered that the foregoing bill of exceptions may and does constitute the plaintiffs' bill of exceptions, except that plaintiff may have his bill of exceptions certified to the Appellate Court without attaching thereto volumes 1, 2 and 3 of the printed record in this case, numbered Case 1782,

heretofore printed in the Appellate Court, the entire contents of which volumes were referred to and used by the plaintiff in the last trial of this case before this Court. This order is made pursuant to stipulation of counsel on file herein.

Done in open court this 12th day of June, 1911, and during the term at which said cause was tried.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: No. 547-A. In the District Court for the District of Alaska, Division No. 1. G. W. Hinchman et al. vs. Solomon Ripinsky. Bill of Exceptions. Filed Jun. 12, 1911. E. W. Pettit, Clerk. By —————, Deputy. [75]

No. 547-A.

G. W. HINCHMAN et al.,

Plaintiffs,

vs.

SOLOMON RIPINSKY,

Defendant.

Praeipce for Transcript.

To the Clerk of the District Court of Alaska Division No. 1:

You will please make up the transcript of the record for appeal of the above-entitled and numbered cause and include therein the following papers, documents on file and of record in your office to wit: (1) Third amended complaint filed May 13, 1911. (2) Demurrer to third amended complaint, filed May 15, 1911. (3) Order overruling same, entered May 15,

1911. (4) Answer to third amended complaint filed May 15, 1911. (5) Findings of fact and conclusions of law, filed May 29, 1911. (6) Decree, filed May 29, 1911. (7) Petition for appeal, filed June 3, 1911. (8) Order allowing appeal, filed June 3, 1911. (9) Assignment of errors, filed June 3, 1911. (10) Bond, filed June 3, 1911. (11) Citation and return thereon. (12) Order extending time to file transcript. (13) Order in re making transcript, filed June 3, 1911. (14) Bill of exceptions. (15) This praecipe. (16) Certificate of clerk.

Said transcript to be made up and transmitted to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit San Francisco. in accordance with the rules or practice of the said Circuit Court of Appeals and of this court.

Dated July 11, 1911.

R. W. JENNINGS and

J. H. COBB,

Attorneys for S. Ripinsky,

[Endorsed]: No. 547-A. In District Court for Alaska, Division No. 1, Juneau, Alaska. G. W. Hinchman et al. vs. Solomon Ripinsky. Praecipe for Transcript. Filed July 11, 1911. E. W. Pettit, Clerk. By J. J. Clarke, Deputy.

[Endorsed]: No. 547-A. G. W. Hinchman et al., Plaintiffs, vs. Solomon Ripinsky, Defendant. Praecipe for Transcript. [76]

[Clerk's Certificate to Transcript.]

In the District Court for the District of Alaska, Division No. 1, At Juneau.

No. 547-A.

G. W. HINCHMAN, WILLIAM HOLGATE,
JOHN G. MORRISON, J. A. NETTLES,
CORTEZ FORD, TOM VALEUR, R. M.
ODELL, D. BUTRICH, E. J. BERGER,
IDA JOHNSON, M. E. HANDY, FRED
HANDY, G. C. DE HAVEN, TIM CREE-
DON, BENJAMIN A. MAHAN, THOMAS
DRYDEN, ED FAY, JAMES FAY, H. FAY,
W. W. WARNE, THOMAS VOGEL, C.
BJORNSTAD, H. RAPPOLT, KAREN
BJORNSTAD, M. V. McINTOSH, MARY
V. McINTOSH, JESSE CRAIG, E. A.
ADAMS, J. W. MARTIN, A. J. DENNER-
LINE, S. J. WEITZMAN, PETER JOHN-
SON, Mrs. KATE KABLER and V. READE,

Plaintiffs and Appellees,

vs.

SOLOMON RIPINSKY,

Defendant and Appellant.

I, E. W. Pettit, Clerk of the District Court for the District of Alaska, Division No. 1, do hereby certify that the foregoing and hereto attached seventy-six pages of typewritten and written matter, numbered from one to seventy-six, both inclusive, and

the three printed volumes of the record in Cause No. 1782 in the United States Circuit Court of Appeals for the Ninth Circuit; constitute a full, true and complete record, and the whole thereof, on appeal, as requested in the praecipe of the appellant, filed herein and made a part hereof, in Cause No. 547-A. entitled: G. W. Hinchman, William Holgate, John G. Morrison, J. A. Nettles, Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich, E. J. Berger, Ida Johnson, M. E. Handy, Fred Handy, G. C. De Haven, Tim Creedon, Benjamin A. Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Thomas Vogel, C. Bjornstad, H. Rappolt, Karen Bjornstad, M. V. McIntosh, Mary V. McIntosh, Jesse Craig, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Kabler and V. Reade, Plaintiffs and Appellees vs. Solomon Ripinsky, Defendant and Appellant; and the Order of the Court made and entered on the 3d day of June, 1911, and contained in said record.

I do further certify that the said record is by virtue of the order allowing appeal and the citation issued herein and made a part hereof, and the return in accordance therewith.

I do further certify that the said record has been prepared by me in my office, and the cost of preparation, examination and certificate, amounting to Twenty-three and 60/100 Dollars (\$23.60) has been paid to me by John H. Cobb, Esquire, attorney for the appellant.

In witness whereof I have hereunto set my hand

and the official seal of the above entitled court this 8th day of August, 1911.

[Seal]

E. W. PETTIT,

Clerk of District Court, Dist. of Alaska, Division
No. 1.

[Endorsed]: No. 2015. United States Circuit Court of Appeals for the Ninth Circuit. Solomon Ripinsky, Appellant, vs. G. W. Hinchman, William Holgate, John G. Morrison, J. A. Nettles, Cortez Ford, Tom Valeur, R. M. Odell, D. Butrich, E. J. Berger, Ida Johnson, M. E. Handy, Fred Handy, G. C. De Haven, Tim Creedon, Benjamin A. Mahan, Thomas Dryden, Ed. Fay, James Fay, H. Fay, W. W. Warne, Thomas Vogel C. Bjornstad, H. Rappolt, Karen Bjornstad, M. V. McIntosh, Mary V. McIntosh, Jesse Craig, E. A. Adams, J. W. Martin, A. J. Dennerline, S. J. Weitzman, Peter Johnson, Mrs. Kate Kabler, and V. Reade, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed August 15, 1911.

F. D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.

At a stated term, to wit, the September term A. D. 1911, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the City of Seattle, in the State of Washington, on Monday, the eleventh day of September, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2015.

SOLOMON RIPINSKY,

Appellant,

vs.

G. W. HINCHMAN et al.,

Appellees.

**Order Granting Motion That Evidence in Printed
Record in Case No. 1782 Need not be Printed
Again Herein, etc.**

On consideration of the motion of counsel for the appellant, filed September 6, 1911, and presented by Mr. Charles T. Hutson, on behalf of counsel for the appellant, for an order approving the stipulation of counsel that certain evidence be not again printed herein, etc., and on consideration of the said stipulation,

It is ORDERED that the said motion be, and hereby is granted, and, pursuant to the said stipulation, it is ORDERED that the evidence contained in the

printed transcript of record in case No. 1782 in this Court, entitled Solomon Ripinsky, appellant, vs. G. W. Hinchman et al., appellees, which evidence was read in evidence on the second trial of the case in the court below and certified to this Court on the present appeal, need not be again printed. but that the printed transcript of record in said case No. 1782 may be used on the hearing of the present appeal with the same effect as if the evidence therein contained had been again printed in the record in the present case, and it is **FURTHER ORDERED** that in any appeal that the appellees G. W. Hinchman et al. may take they will not be required to print said record but may likewise use the record in said case No. 1782.

